

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 7, 2008

STATE OF TENNESSEE v. DANYEL D. MARTIN

Appeal from the Circuit Court for Williamson County
No. II-CR022442 Timothy L. Easter, Judge

No. M2008-00178-CCA-R3-CD - Filed April 14, 2009

The defendant, Danyel D. Martin, pled guilty to one count of driving on a revoked license, third offense, a Class A misdemeanor, and was sentenced to eleven months, twenty-nine days, with the sentence to be suspended after serving 120 days in jail. The defendant appeals, claiming that the trial court's sentence was excessive. After reviewing the record, we affirm the judgment of the trial court

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and CAMILLE R. McMULLEN, JJ., joined.

Trudy L. Bloodworth, Franklin, Tennessee (on appeal); and Paul J. Bruno, Nashville, Tennessee (at guilty plea and sentencing hearing), for the appellant, Danyel D. Martin.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; Kim R. Helper, District Attorney General; and Derek K. Smith, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The record reflects that after the defendant left his place of employment on September 28, 2006, he made an illegal turn on a Franklin street. A Franklin police officer pulled him over and discovered that the defendant's license had been suspended for failing to satisfy a citation. The defendant was subsequently arrested. On December 19, 2007, the defendant pled guilty to one count of driving on a suspended or revoked license, third offense, a Class A misdemeanor. The two prior convictions for purposes of the indictment occurred in July 2005 and June 1995, both in Davidson

County.

Immediately after the defendant entered his guilty plea, the trial court conducted a sentencing hearing. Prior to the defendant's testimony, the state introduced several exhibits detailing the defendant's driving record and his history of criminal convictions. The driving record, prepared by the Department of Safety, indicated that the defendant had at least four convictions for driving on a suspended or revoked license, two convictions for speeding, and several failures to satisfy citations. The defendant's criminal record also included a 2005 conviction for possession of a gambling device, a 1997 conviction for facilitation of forgery, and a 1995 conviction for felony theft of property. The record reflects that the defendant was placed on three years' probation after the theft conviction but that this probation was revoked after he pled guilty in the facilitation of forgery case.

The defendant testified that he was the primary caregiver for his seven children, who ranged in age from thirteen to seven years old, although his mother and friends also helped him in this regard. He said that his ex-wife, the children's mother, had a drug problem and had not seen the children in seven months. He noted his concern that were he to be sent to jail, his mother would be unable to take care of the children by herself, given her health issues such as hypertension and obesity.

The defendant said he had been employed as a truck driver, delivering bricks for a company that provided bricks for new buildings; however, following the downturn in the housing market, he was laid off from that job. The defendant testified that he presently had only part-time employment through a staffing agency, although he was actively seeking full-time employment. Regarding his past history of driving offenses, he noted that many of his citations for driving on a revoked or suspended license resulted from a police officer targeting him because the officer knew that he did not have a license. The defendant said that in several of the instances where his driver's license was suspended, the license was reinstated after he paid certain fees. The defendant insisted that he did not have a drug problem and had not been in legal trouble since being arrested for possession of gambling devices. He said that were he placed on probation, he would stay out of trouble because he had "seven responsibilities besides myself. . . . [A]nything . . . involv[ed] with doing the wrong thing is not in my nature anymore."

At the conclusion of the sentencing hearing, the trial court sentenced the defendant to the maximum term of eleven months and twenty-nine days, with the sentence to be suspended after the service of 120 days in jail. The defendant subsequently filed a timely notice of appeal.

ANALYSIS

The defendant's sole issue on appeal is that the trial court imposed an excessive sentence. Misdemeanor sentencing is controlled by Tennessee Code Annotated section 40-35-302, which provides that the trial court shall impose a specific sentence consistent with the purposes and principles of the 1989 Criminal Sentencing Reform Act. Tenn. Code Ann. § 40-35-302(b). Misdemeanor sentencing is designed to provide the trial court with continuing jurisdiction and a great deal of flexibility. See State v. Troutman, 979 S.W.2d 271, 273 (Tenn. 1998); State v. Baker,

966 S.W.2d 429, 434 (Tenn. Crim. App. 1997). In misdemeanor sentencing, the trial court retains the authority to place the defendant on probation either immediately or after a time of periodic or continuous confinement. See Tenn. Code Ann. § 40-35-302(e)(1)-(2). Appellate review of misdemeanor sentencing is de novo with a presumption of correctness even if the trial court fails to make specific findings on the record, because the “trial court need only consider the principles of sentencing and enhancement and mitigating factors in order to comply with the legislative mandates of misdemeanor sentencing.” Troutman, 979 S.W.2d at 274.

In imposing its sentence, the trial court found that the defendant’s history of criminal convictions and criminal behavior supported confinement. The trial court also imposed a sentence of confinement based upon the defendant’s prior failed attempt at probation following his theft conviction, and to avoid depreciating the seriousness of the offense. These findings were supported by the record. The defendant argues that the trial court should have imposed a lesser sentence based upon the existence of mitigating factors including “the lack of serious bodily injury in the case, the defendant’s positive work history, his efforts to obtain a valid license and the current status of his license, . . . the tremendous burden and economic hardship involved with the situation, and his ability to pass a drug test.” However, the trial court considered the defendant’s evidence of these mitigating factors, as required, and after weighing these mitigating factors against the factors favoring incarceration, it sentenced the defendant to a term of 120 days in jail. In our view, the trial court’s actions in sentencing the defendant were appropriate under the applicable statutes and sentencing principles. The defendant is therefore denied relief on this issue.

CONCLUSION

Upon consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE